



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### PUBLIC DOCUMENTS REGULATIONS REG-WOS 2010-009 052912-002

**I. Introduction.** These Regulations are promulgated for all LTBB branches of government, the Prosecutor and the Election Board pursuant to Section IX of the Public Documents Statute, WOS 2010-009, which was passed by Tribal Council on July 25, 2010 and deemed enacted August 26, 2010. These Regulations set forth:

- A. A method for defining classifications of documents as either “Exempt” or “Non-Exempt”;
- B. A method and process for redacting portions of documents classified Exempt to be released as a Non-Exempt document;
- C. A method for marking, controlling, keeping and releasing documents; and
- D. A section for reasonable costs for release of documents.

### **II. Definitions:**

- A. **Appropriate Authority:** means the officials, individual employees and/or manager who possess the authority to make the decision regarding public documents within the respective Entity.
- B. **Authorized Representative:** means an LTBB Tribal Citizen (Citizen) who holds a signed notarized statement of authority on behalf of another Citizen.
- C. **Copies:** means paper photocopies, commonly referred to as hard copies. It may also include electronic files unless otherwise indicated in these Regulations.
- D. **Entity:** means the Executive, Legislative, Judicial branches, the Prosecutor, the Election Board, Corporate Charters, and Enterprises.
- E. **PDO or Public Documents Officer:** means an official, individual employee and/or manager designated by the respective branch of government, the

Prosecutor or the Election Board to process Public Documents requests.

- F. **LTBB or Tribe:** means the Little Traverse Bay Bands of Odawa Indians.
- G. **Public Documents:** means a writing prepared, owned, used, in the possession of, or retained by a government branch or division, department, agency, commission, board, committee, entity, enterprise or office in the performance of an official function, from the time it was created. The Public Documents Statute and these Regulations do not require officials and staff to create any reports or other documents that do not already exist at the time of the request.
- H. **Sensitive Documents:** means documents that are not exempted from review by Citizens under the Public Documents Statute or these Regulations, but can only be reviewed on-site because they contain information that should not be disseminated to the general public to protect the interests of LTBB and its Citizens.

**III. Classification of Documents.** All written or electronic documents in possession of the Tribe are Non-Exempt Public Documents except for the following which shall be classified Exempt:

- A. Sealed adoption records within a Citizen's enrollment file that have been sealed under a court order. This exemption includes a Citizen's own records unless the Citizen obtains a court order for their release.
- B. Records covered by attorney client privilege. Work product generated by an attorney employed or retained by the Tribe, and consultants to an attorney, such as expert witnesses, including research, memoranda, written and electronic correspondence, less than five years old is assumed to fall under the attorney client privilege unless the Tribe's Legal Department certifies otherwise to the PDO. Work product generated by an attorney employed or retained by the Tribe, or by an attorney's consultant, that is over five years old is assumed to be a public document unless the Tribe's Legal Department certifies otherwise to the PDO, such as situations where the documents involve cases or matters that are still pending.
- C. Records that contain confidential business, potential business dealings or legal matters involving the Tribe or a Citizen. The release of documents which could impair the business or legal interests of the Tribe or a Citizen fall under this exception. Each Entity shall consult with respective staff or Appropriate Authority to certify to the respective PDO whether documents fall under this exception.

- D. Records that raise significant privacy or confidentiality concerns for the Tribe or a Citizen. This exemption includes employment personnel files, social security numbers, counseling and medical records, and similar records the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption does not include withholding information pertaining to the Citizen except as provided in subsection A, records covered by the Tribe's attorney-client privilege under subsection B, or as otherwise provided by applicable law.
- E. Records within a pending investigation either before an administrative or judicial proceeding involving the Tribe or a Citizen.
- F. Records subject to or that could impair a criminal investigation.
- G. Records specifically exempt by other current and future statutes. Examples of statutes containing provisions regarding confidential records include, but are not limited to:
  - 1. Citizenship Statute,
  - 2. Child Protection Statute,
  - 3. Child Welfare Commission Statute,
  - 4. Juvenile Justice Statute,
  - 5. Economic Development Commission Statute,
  - 6. Gaming Regulatory Statute, and
  - 7. Domestic Violence Protection.

**IV. Redacting Documents Classified Exempt.** Circumstances that surface where a document that is classified Exempt that could potentially be rendered Non-Exempt by redacting portions of the document the following events occur:

- A. When it has been determined, only by legal review by the use of a Legal Request Form, that a document that would be classified Exempt could be redacted to change the classification to Non-Exempt status the document is reviewed and redacted by the Legal Department and returned to the requestor who conducts their own final review.
- B. The document is forwarded to the respective PDO for release.

**V. Request and Disposition Forms.**

- A. Request form. The request form shall be made readily accessible on the LTBB website homepage. The form shall include the name, address and contact information of the Citizen making the request, the Citizen's enrollment number, a place for a description of the document requested, whether the request is for copies or on-site review, and a signature and date line. The request must contain the specific document being requested with the document name and the date, when applicable. Only one document may be requested per Request Form. If the request is made by an Authorized Representative, a signed notarized statement of authority from such Citizen must be attached to the request form.
- B. The request form will be made available to all Citizens, by sending, faxing or emailing it to them upon their written or verbal request, and through the LTBB website. Public Documents will only be subject to release or on-site review upon completion and submission of a signed request form with a copy of the Tribal Identification Card and the Tribal Identification Card of the Authorized Representative if applicable.
- C. If a request for document review is presented in person the requestor must provide their Tribal Identification Card, which will be copied and they will be provided with a Request Form to be completed prior to releasing the requested documents for on-site review or making copies.

**VI. Processing Requests.** If it is apparent upon initial review of a request form, or upon oral request before a form is filled out, that all requested documents are readily available to the public on LTBB's website, the PDO or Appropriate Authority may refer the requestor to the location of the documents on the website. Hard copies of such documents may be provided to the requestor without further procedures, subject to any copy costs set under these Regulations.

- A. All Public Documents request forms submitted by Citizens will be receipt date stamped or dated with a hand-printed name and initialed by the individual who receives the request. If the request is received by LTBB personnel who is unsure of the appropriate PDO the request shall be forwarded to the Executive Office for an appropriate PDO determination. The Executive Office will then forward the request to the appropriate Entity and the respective PDO will then process the requests as follows:
  - 1. The PDO will first review the request form to make sure that all information has been filled in and that the form is signed by the Citizen. Requests must be clear and specific in nature, for example, if the request does not name a specific document and specific date, when applicable, the request will be deemed vague and shall be rejected. If the form is

incomplete the PDO will contact the Citizen by phone, email or mail, to inform the Citizen of the omitted information or to clarify the request. The Citizen may come in and finish the form or submit a new form. Requests that are not clarified are subject to rejection, and the PDO will provide the requestor notification of the rejection.

2. Once the PDO determines that the form is complete, the PDO will proceed with classification of the requested documents as Public Documents “Classified Non-Exempt” or documents falling under a Section III exception being “Classified Exempt”.
  - a. The PDO will first check to see if any of the requested documents are available on public access portions of the website. Any such documents will automatically be classified as Public Documents (Non-Exempt). For such documents, the PDO will contact the Citizen to ask if the Citizen prefers to access the documents on-line or would still like a copy. If a copy is provided the documents will be printed, marked “Non-Exempt” and sent to the Citizen.
  - b. Each Entity will be provided these Regulations. For documents not available through public access portions of the website, the PDO will forward a copy of the request form to the appropriate authority where the requested document is housed. If the document is a Public Document (Classified Non-Exempt), then the appropriate authority will forward photocopies to the PDO, or coordinate with the PDO to arrange a time and place for on-site review if the Citizen has so requested. If one or more documents fall under a Section III exception (Classified Exempt), the appropriate authority shall notify the PDO of the exception in writing. If the appropriate authority has any question as to the status of a document as a Public Document or Section III exception, the appropriate authority shall request a review and opinion from the Legal Department by use of a Legal Request Form. If the requested document is no longer retained due to retention periods spelled out in policies the requestor will be notified that the requested document is no longer retained and they will be given a copy of the applicable policy.
  - c. The PDO will send marked copies of requested Public Documents to the requesting Citizen at the address provided on the request form, or hand deliver via requestor pick-up the Public Documents to the Citizen. If electronic copies of documents are available, the PDO may provide them via email, compact disc, or by similar technology if the Citizen so prefers. In the event the Citizen has

indicated a preference on the request form to review documents on-site rather than receive copies, the PDO will coordinate such review with the appropriate authority. The PDO will also provide the Citizen a list of all documents that were not subject to review or release under Section III, along with a citation to the applicable subsection.

- d. Sensitive Documents as defined herein can only be reviewed on-site by the requesting Citizen, and copies of such documents shall not be provided.
- e. Receipt of Fees. For each Public Document Request there is a \$1.00 processing fee. There are no fees associated when providing copies of personnel files to the employee or former employee whether the requestor is a Tribal Citizen or not. In addition to the initial processing fee the following fees will apply:
  - i. The fee for photocopied documents will be one-dollar (\$1.00) for any documents in excess of 10 pages up to 19 pages. An additional dollar is charged for additional accumulations of 10 pages. For example 20 -29 pages shall be two dollars (\$2.00) and 30-39 pages shall be three dollars (\$3.00), etc., with the exception of a request for the Tribal Code of Law which a fee will be assessed of one-hundred fifty dollars (\$150.00).
  - ii. The fee for copies supplied on a CD is five dollars (\$5.00) per CD.
  - iii. The fee for copies supplied on a Flash Drive is ten dollars (\$10.00) per Flash Drive.
  - iv. A receipt shall be provided.
- f. Timing. The PDO will use best efforts to provide document copies or arrange for on-site review within ten (10) business days of the receipt of a request. The timing does not include the day in which the request is received. When this is not possible, due to factors such as difficulty in locating archived documents or availability of department staff to coordinate review, the PDO will notify the Citizen of the time it will take to process the request.
- g. Notification of Appeal Rights. If all or part of a Public Documents request is denied, the PDO will provide written notification to the requesting Citizen of the right to file a complaint in LTBB Tribal

Court within thirty (30) days of the denial.

## **VII. Marking, Controlling, and Safe-keeping of Documents.**

### **A. Marking.**

1. Paper documents. To the extent feasible, hard copy documents that fall under a Section III exception shall be marked confidential and classified exempt at the point of generation or filing, along with a brief notation of the Section III exception. For example the notation will be a reference to the applicable section of these regulations.
2. For future reference, to the extent feasible whenever a document is requested under the Public Documents Statute and these Regulations, when a determination is made regarding classification, the document shall be marked "Classified Non-Exempt" or "Classified Exempt" and noted with the date of request.
3. Electronic Copies. To the extent feasible, all electronic documents that fall under a Section III exception shall be marked confidential and classified exempt by an appropriate water mark, header, or footer.
4. To avoid releasing confidential documents, or failing to release documents that are no longer Exempt, a determination of the status of a document must be made each time a document request form is being processed under Section VI, regardless of any notations on the documents. If necessary, document markings will be added, updated or corrected at the time of processing requests under these Regulations.

### **B. Control and Storage.**

1. Limited Access. Each Entity shall be responsible for implementing measures which limit access to non-public documents (Classified Exempt) (documents falling under a Section III exception) to staff or officials who are authorized to handle or view such documents.
2. Notice and Posting. Areas not open to the public should be clearly marked and should indicate that access to that area is limited to authorized staff.
3. Non-public documents (Classified Exempt) shall be stored in an area that is not accessible to the general public; the storage area must be capable of being locked or otherwise secured. Non-public documents should be handled at all times in a manner which preserves their non-public

character.

4. Public Documents (Classified Non-Exempt). Public documents may be stored in any manner which is convenient or efficient, that reasonably protects them from loss or damage.

### **CERTIFICATION**

As Chairperson, I approve these Public Documents Regulations.

Date: \_\_\_\_\_

\_\_\_\_\_  
Dexter McNamara, Tribal Chairperson

Received by the Tribal Council Office on: \_\_\_\_\_ by: \_\_\_\_\_

As the Legislative Leader and Tribal Council Secretary, we certify that these Public Documents Regulations were approved by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on \_\_\_\_\_ at which a quorum was present, by a vote of \_\_\_\_ in favor, \_\_\_\_ opposed, \_\_\_\_ abstentions, and \_\_\_\_ absent.

Date: \_\_\_\_\_

\_\_\_\_\_  
Melvin L Kiogima, Legislative Leader

Date: \_\_\_\_\_

\_\_\_\_\_  
Regina Gasco Bentley, Secretary